IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 1194 OF 2006

DATE OF DECISION: SEPTEMBER 29, 2006

Parties Name

M/s V.M. Spinning Mills

..PETITIONER

VERSUS

Oriental Bank of Commerce and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE PRITAM PAL

PRESENT: Mr. Pankaj Gupta,
Advocate, for the petitioner.

Mr. G.S. Anand, Advocate,
for respondent No. 1.

Mr. Vikas Chatrath, Advocate,
for respondent No. 3.

JASBIR SINGH, J.

Judgment.

This writ petition has been filed by the petitioner for issuance of a writ of certiorari to quash order dated January 20, 2006 (Annexure P-7), passed by respondent No. 2, and further for issuance of a writ of mandamus directing respondent No. 1/ the Bank to settle loan account of the petitioner, as per Reserve Bank of India guidelines dated September 3, 2005 (Annexure P-2).

The petitioner is a partnership Firm and was engaged in the business of spinning of yarn. It availed term loan facility of Rs. 43 lacs and

cash credit facility of Rs. 30 lacs from respondent No. 1 in the year 1996. After availing that facility, it continued to make payment of the instalments, as per rules. However, in the year 1998-99, it became defaulter on account of losses suffered by it in the business. Respondent No. 1 filed original application (OA) before the Debts Recovery Tribunal at Jaipur for recovery of an amount of Rs.1,09,66,098.71 P. along with pendente lite and future interest at the rate of 15% per annum with quarterly rest. The application, thereafter, was transferred to the Debts Recovery Tribunal at Chandigarh and the same was allowed vide order dated August 26, 2003, recovery certificate, of the even date was also issued. The proceedings then continued before the Recovery Officer, respondent No. 2, who issued proclamation for sale, and three properties of the petitioner – Firm were ordered to be sold on November 10, 2005, November 11, 2005 & November 16, 2005 respectively. First property was auctioned for an amount of Rs. 9.35 lacs in favour of the added respondent and the second was auctioned for an amount of Rs. 10 lacs. (As per information available, the auction purchaser has moved the respondent No. 1 for refund of amount, deposited by him). In the meantime, Reserve Bank of India issued guidelines on September 3, 2005, offering one time settlement of non-performing assets (NPAs) in small and medium enterprises(SMEs) sector. The petitioner, being eligible, made a representation to respondent No. 1 on November 16, 2005, showing its willingness to settle its accounts, as per guidelines, and a further request was made to intimate it, the amount outstanding on the date, when the account was declared NPA, so that the petitioner could deposit 25% of the said amount as per guidelines Annexure P2. To show its bonafide, the petitioner deposited a sum of Rs. 1,00,000/- in cash with the

Bank, when that representation was made. In the meantime, as the proceedings were going on before the Recovery Officer, the petitioner , by moving an application, also deposited an amount of Rs. 10,00,000/- regarding property No. 1 and Rs. 10,60,000/- regarding property No. 2 with the Recovery Officer, respondent No. 2, on December 9, 2005. In the application Annexure P-4, it was specifically stated that the petitioner had made an offer to the respondent – Bank, to pay the out-standing amount as per Reserve Bank of India guidelines and had already paid Rs. 1,00,000/- on November 16, 2005. It was further prayed that the sale certificate be not issued in favour of the auction purchaser. When the petitioner failed to get any response from respondent No. 1, it sent another letter Annexure P-5 on December 15, 2005, wherein it was again brought to the notice of respondent No. 1 that the petitioner is ready to deposit the amount, as per 'One Time Settlement' scheme and keeping in view the said object, it had already deposited Rs. 1,00,000/- with the Bank and Rs. 20.60 lacs with the Recovery Officer, which are lying deposited in a Bank. It was further mentioned in that letter that the petitioner would deposit the remaining amount, as per policy, issued by the Reserve Bank of India. By stating above mentioned facts, petitioner also moved an application before the Recovery Officer to adjourn the proceedings by stating that case of the petitioner for 'one time settlement' is under active consideration. That application was dismissed vide order dated January 20, 2006 (Annexure P-7) and it was observed by the Recovery Officer, respondent No. 2, that as the petitioner had not deposited the entire outstanding amount, i.e., Rs. 2,72,66,177/-, the auction could not be set aside. It was further ordered that the amount be returned to the petitioner. The matter was adjourned to

January 27, 2006, for confirmation of the sale in favour of the auction purchaser. At that stage, the petitioner came to this Court, and the following order was passed on January 25, 2006:

> " Let notice of motion issue to the respondents to show cause as to why the petition be not admitted, returnable on 16.3.2006.
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> It is submitted by Mr. Gupta, learned counsel for the petitioner that the amount to be deposited in terms of the guidelines issued by the Reserve Bank of India on 3rd September, 2005 for 'One Time Settlement' has already been deposited with the Recovery Officer and petitioner's proposal for 'One Time Settlement' is under active consideration of the Bank. If that be so, we direct that till a final decision is taken by the Bank on the proposal made by the petitioner for 'One Time Settlement', the sale of the properties, put to auction, shall not be confirmed."

In reply, filed by respondent No. 1, it has been stated that the settlement, as per 'One Time Settlement" scheme was offered to the petitioner with regard to two accounts, i.e., one of the petitioner and another of its sister concern, namely, M/s V.M.Textile Mills. It was further stated that the settlement was composite in nature, i.e., not just with regard to account of the petitioner but also the account of M/S V.M. Textile Mills. To say so, reference was made to the document Annexure R1/1, which was sent to respondent No. 1 – the Bank on June 21, 2006, by its headquarter. It is also coming out from the records that consequent to document Annexure R1/1, a formal letter was issued to the petitioner by respondent No. 1

intimating it that its loan account has been settled and the petitioner was directed to pay 25% of the settled amount on or before June 30, 2006. Admittedly, the letter Annexure A1/1 was written on June 28, 2006. On June 30, 2006, petitioner wrote a letter to respondent No. 1 intimating that Rs. 1,00,000/- was deposited by it, when application for one time settlement was moved. Rs. 21,60,000/- are lying deposited with the Recovery Officer in a Bank. The total amount as such comes to more than 25% of the settlement amount. It was requested that the said amount be adjusted and for the remaining amount, an undertaking was given that it would be paid within the stipulated period. Copy of the letter has been brought on record as Annexure A2. In written-statement, it has further been said that as the petitioner failed to deposit 25% of the settlement amount, the settlement was cancelled and as such at present the petitioner is under an obligation to pay the entire amount decreed against it, by the Debts Recovery Tribunal.

Counsel for the auction purchaser, Shri Chatrath, has stated that as he has deposited the entire amount, the auction regarding property No. 1 be not set aside.

At the time of hearing on September 14, 2006, offer was made by counsel for the petitioner that the petitioner is ready to pay the amount due, in both the accounts , as settled by the Bank. Counsel for the respondent – Bank sought time to get instructions and the matter was adjourned to today. When the matter came up for hearing before this Court, Shri G.S. Anand, Advocate, counsel for respondent No. 1, stated that as the stipulated date, under One Time Settlement scheme, to make payment of the amount had expired, it was not possible for the Bank to settle defaulted account of the petitioner. Matter was heard on merits.

It is an admitted fact that a decree was passed against the petitioner on August 26, 2003, holding that respondent No. 1 is entitled to recover an amount of Rs. 1,09,66,098.71 paise. Accordingly, a recovery certificate was issued. In recovery proceedings, three properties of the petitioner were ordered to be put to auction. First property was sold on November 10, 2005, for an amount of Rs. 9,35,000/- and the second property was auctioned on November 11, 2005, for an amount of Rs. 10,00,000/-. Admittedly, auction purchaser for the second property has already moved an application seeking refund of the amount deposited by him. Auction purchaser for the first property has already deposited the entire amount. However, sale in his favour has not yet been confirmed and the matter is pending before the Recovery Officer. This Court has stayed the confirmation of sale vide its order dated January 25, 2006.

By referring to above mentioned facts and placing reliance upon judgment of the Hon'ble Supreme Court in Seth Kashi Ram Chemical (India) v. State of Haryana and others, 1991 Supp (1) Supreme Court Cases 215, counsel for the petitioner has contended that in such a situation, the auction purchaser is only entitled to refund of his amount along with interest and penalty at the rate of 5% , as envisaged under Schedule II of the Procedure for Recovery of Tax under the Income-tax Act, 1961

We feel that the argument, advanced by counsel for the petitioner, in view of the facts of this case, is justified. It is a case where undue hardship will be caused to the petitioner, in case the property sold, is ordered to be handed over to the auction purchaser. As per judgment of the Hon'ble Supreme Court, referred to above, unless the conveyance deed is

executed, the right of the highest bidder remains confined to refund of the deposit made by him and also to get interest, penalty etc., as per rules. It is also not in dispute that the petitioner was entitled to get benefit of the One Time Settlement scheme (Annexure P2). Accordingly, it had moved an application Annexure P3 to claim that benefit on November 16, 2005. It had also deposited an amount of Rs. 1,00,000/- with that application. Before the Recovery Officer also, the petitioner had deposited an amount of Rs. 20,60,000/- on December 9, 2005, by moving an application, in which it was further stated that its case for settlement is pending. Prayer was made to cancel the auction. When no response was received from respondent No. 1 regarding settlement, the petitioner again sent a letter dated December 15, 2005, (Annexure P-5) reiterating its desire to settle the account, as per policy of the Reserve Bank of India. It was also brought to the notice of the Bank that Rs. 1,00,000/- were deposited with the earlier application (Annexure P-3) and Rs. 20,60,000/- were deposited with the Recovery Officer, which are lying deposited in a Bank and the said amount is more than 25% of the tentative amount of the settlement. An undertaking was given that the remaining amount would be paid within the stipulated period. Application for adjournment was not entertained by the Recovery Officer and order Annxure P-7 was passed stating that as the petitioner had not deposited the entire amount of Rs. 2,72,66,177/- the sale could not be set aside, and it was ordered that amount of Rs. 20,60,000/- be returned to the petitioner. This Court feels that the Recovery Officer passed that order Annexure P-7 on January 20, 2006, unmindful of the fact that the petitioner was entitled to get benefit under 'One Time Settlement' scheme and its case was under consideration. Furthermore, as the sale is not confirmed, no right

has yet accrued in favour of the auction purchaser. One of the auction purchasers has already moved an application for refund of the amount deposited by him. It is also an admitted fact that after passing of the order Annexure P-7, vide intra-departmental communication Annexure R1/1 dated June 21, 2006, respondent -Bank has decided to settle accounts of the petitioner and also its sister concern. The decision, referred to above, was conveyed to the petitioner on June 28, 2006, vide Annexure A1/1 and very surprisingly, only two days were given to the petitioner, i.e., upto June 30, 2006, to deposit an amount of Rs. 21,00,000/- being 25% of the offered amount towards both the accounts, i.e., one of the petitioner and the second of its sister concern. It appears that when order of settlement was passed on June 21, 2006 and thereafter when it was conveyed to the petitioner on June 28, 2006, the Bank has failed to take note of the earlier communication sent by the petitioner that it had already deposited an amount of Rs. 21,60,000/- and the same could be adjusted towards 25% of the settlement amount. The petitioner again wrote a letter on June 30, 2006, stating above mentioned facts and made a request that the amount, already deposited before the Recovery Officer, which is lying in a Bank and Rs. 1,00,000/-, deposited by it, when application for settlement was moved, be adjusted towards 25% of the settlement amount and the remaining it shall pay within the stipulated period. Without taking note of the above mentioned facts, the settlement was cancelled in a very arbitrary manner. This Court feels that the attitude adopted by the Bank is most unreasonable and once it is so, interference can be made by this Court to settle dispute between the parties. Application for settlement was moved in the month of November, 2005, and a sum of Rs. 1,00,000/- was deposited along with that application. Thereafter also, the

petitioner deposited Rs. 20,60,000/- with the Recovery Officer, who deposited the same in a Bank. Two reminders were sent by the petitioner thereafter. The Bank remained mum and the matter was decided only on June 21, 2006, and conveyed to the petitioner on June 28, 2006, whereby only two days' time was given to it to deposit more than Rs. 21,00,000/-. The petitioner had already deposited the said amount and intimation in that regard was also sent to the respondent – Bank in the month of December, 2005, and also thereafter. Nobody applied mind to that fact and the settlement was cancelled unjustifiably without giving any reason and even without taking note of the letter sent by the petitioner. As the petitioner has undertaken before this Court that after adjustment of Rs. 21,60,000/-, lying deposited , as referred to above, the remaining amount with regard to both the accounts, it shall pay within six weeks from today, this Court feels that the respondent – Bank is required to be directed to revive that settlement, which was conveyed to the petitioner vide their letter dated June 28, 2006. The Bank shall be entitled to recover the amount, so determined, as per 'One Time Settlement' policy with interest till the final payment is made. In view of the passing of the subsequent orders, settling the accounts, the order Annexure P7, passed by the Recovery Officer, has virtually become non-existent. As the sale has not yet been confirmed, the auction purchaser shall be entitled to refund of his amount along with interest and penalty, as per law. Interest and the penalty amount shall also be paid by the petitioner within six weeks from today. On deposit being so made, respondent No. 1 – Bank shall clear both the accounts, i.e., one held by the petitioner and the second by its sister concern. It is made clear that if the petitioner fails to deposit the remaining amount within six weeks from today, as undertaken

by it, this writ petition shall be deemed to have been dismissed. The writ petition stands disposed of accordingly. No order as to costs.

(Jasbir Singh)
Judge

(Pritam Pal)
Judge

September 29, 2006.
DKC